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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/801,858   | 03/17/2004  | Hermann Baumann      | 080443.53218US      | 1965             |
| 23911  | 7590        | 01/05/2005           | EXAMINER            |                  |
| CROWELL & MORING LLP<br>INTELLECTUAL PROPERTY GROUP<br>P.O. BOX 14300<br>WASHINGTON, DC 20044-4300 |             |                      | TRIEU, THAI BA      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3748                |                  |
| DATE MAILED: 01/05/2005  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/801,858             | BAUMANN, HERMANN    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Thai-Ba Trieu          | 3748                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,9 and 10 is/are rejected.
- 7) Claim(s) 3-8 and 11-16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

This Office Action is in response to the Amendment filed on November 04, 2004.

Claims 1 and 9 were amended.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as obvious over Ruf et al. (Patent Number 4,716,735).***

Ruf discloses an arrangement for an exhaust gas turbocharger with a carrier housing (10), the exhaust gas turbocharger (2,3) comprising:

a compressor wheel (Not shown, a well-known component of a compressor),

a turbine wheel (Not shown, a well-known component of a turbine),

a bearing housing (1), and

a shaft (4) adapted to connect the compressor wheel and the turbine wheel (See Figures 1-2).

However, Ruf fails to disclose the recitation of "the bearing housing being mounted in and attached to the carrier housing by way of a fastening element in a direction perpendicular to an axis of rotation of the shaft", which is considered as a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to overcome forward with evidence establishing a obvious difference between the two. See *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983).

***Claims 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruf et al. (Patent Number 4,176,735), in view Miller (Patent Number 3,565,497), and further in view of Zloch et al. (Patent Number 4,738,548).***

Ruf discloses the invention as recited above; however, Ruf fails to disclose the fastening element being in the form of screws, the location of the screw heads being arranged within a diameter of the bearing housing.

Miller teaches that it is conventional in the exhaust gas turbocharger art, to utilize the fastening element being in the form of screws (Not Numbered, See Figure 1).

Additionally, Zloch teaches that it is conventional in the exhaust gas turbocharger art, to arrange screw heads of the screws (46) within a diameter of the bearing housing (6) (See Figure 1 and 3, Column 5, lines 61-68, and Column 6, lines 1-14).

It would has been obvious to one having ordinary skill in the art at that time the invention was made, to utilize the fastening element being in the form of screws, as taught by Miller, and to have arranged screw heads of the screws within a diameter of

the bearing housing, as taught by Zloch, to reduce the space required for construction of the Ruf exhaust gas turbocharger.

***Allowable Subject Matter***

Claims 3-8, and 11-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (571) 272-4867. The examiner can normally be reached on Monday - Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTB  
December 22, 2004

  
Thai-Ba Trieu  
Patent Examiner  
Art Unit 3748